

## REMARKS

Entry of the present Amendment and reconsideration of the claims is requested.

### **Status of the Claims**

Claims 3, 6-13, 16, 18 and 20 have been canceled without prejudice or disclaimer of the subject matter therein.

Claims 1, 2, 4, 5, 14, 15, 17, 19, and 21-27 have been amended, and the amendments do not add new matter.

Claims 28-54 have been added and do not add new matter.

Claims 1, 2, 4, 5, 14, 15, 17, 19, and 21-54 are pending in the application.

Support for the amendments, in the Specification, for “forming an electronic contract...” on page 3, lines 3-13. Support for “candidate retail offer...” and the “presenting” step is in the Specification, page 12, line 20 to page 13, line 13. Support for the “receiving” step is in claim 1 as originally presented. Support for the “validating” step is in claims 1 and 6 as originally presented. Support for the “hierarchical relationship” and the “central location” is in the claims as originally presented. Support for “dynamically updating” and “referencing only after a request” is in the Specification, page 13, lines 19-20. Support for “physical media content” is in the Specification, page 7, lines 4-12. Support for “value chain participant” is in the Specification, page 2, line 20 to page 3, line 2 and page 17, lines 10-17. Support for distributing content between a second and third value chain participant is in the Specification, page 16, lines 9-15. Support for a “handle identifying the content” is in

the Specification, page 16, line 21 to page 17, line 1. Support for the "first territory" and the "second territory" is in the Specification, page 9, line 8 to page 10, line 13 and page 16, lines 16-18.

**Rejections under 35 U.S.C. § 102(e)**

Claims 1-27 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,314,409 to Schneck et al. (hereinafter "Schneck").

The Examiner states that Schneck discloses every element of the claimed invention. Applicants respectfully traverse the above rejection.

Claims 3, 6-13 and 16 have been canceled, rendering the rejection of these claims moot.

Regarding claims 1, 2, 4, 5, 14, 15, and 17-27, Schneck does not disclose or suggest numerous features of claims. Specifically, for independent claims 1, 22, and 25, Schneck does not teach or suggest "an electronic contract." An "electronic contract" is described in the specification as being viewed "conceptually as an equation governing the relationship between certain parties or entities. The specific values for the variables in the equation are determined according to each particular circumstance in order to create the specific electronic contract or relationship for that circumstance." Specification, page 2, lines 14-17.

In contrast, the Examiner cites Schneck, column 10, lines 40-46 to anticipate this element wherein Schneck states that

data 106 are typically intellectual property subject to control. In some cases, distributor 102 may receive some form of payment 110 from the user 104 for accessing the data. This payment, or some part thereof, may then be provided directly to the actual owner (not shown) of the data 106. Further, the payment or part thereof may be made before, during or after use of the data.

The above disclosure does not teach one of ordinary skill in the art to first provide and then reference electronic contracts to allocate compensation among parties. Schneck does not teach or suggest providing an agreement as an "electronic<sup>11</sup> equation"

governing the relationship between the parties. Schneck, at best, teaches or suggests that there are contractual terms between the parties, but does not suggest that the terms of the contract are electronic and are referenced as part of the entire method of distributing electronic media. One of ordinary skill in the art is taught only that someone other than the retailer may be entitled to a portion of the payment made by the consumer. Schneck, in essence, only discloses that someone other than the retailer may be entitled to a portion of the payment.

Schneck also does not teach or suggest "presenting, by the retailer for the consumer, a candidate retail offer for the distribution of the electronic media content" and "providing the candidate retail offer." A candidate retail offer is an offer presented by a retailer for the purchase of the media content. The candidate retail offer is not a valid offer in that the offer has not been compared to the electronic contract between the retailer and the distributor to determine if the candidate offer is consistent with the terms of the contract. See, Specification, e.g. page 12, line 20 to page 13, line 13. Thus, even though the candidate retail offer may be presented to the consumer, it also incorporates an offer between the retailer and the distributor for the sale of the same media content. The candidate retail offer must be reconciled with the electronic contract so that it can be approved or "validated" before the consumer can receive the media content. Thus, Schneck does not disclose candidate retail offers. Stated another way, Schneck does not suggest or describe a system for reconciling and validating multiple offers for the sale of content by retailers to consumers against the terms of an electronic contract between the distributors and the retailers

In contrast, Schneck only discloses a fixed and pre-approved offer between the retailer and the consumer. The Examiner's only finding in Schneck of any offer outside the retailer-consumer offer is found in the background, column 3, lines 5-9, wherein "[t]he commercial relationship among information producers (such as authors, performers, and artists), distributors (such as publishers, promoters, and broadcasters), and consumers must change in response to the technology." This vague comment is not a written description or an enabling disclosure of any method or system of electronic contracts and offer/sale processing, and certainly does not suggest the claimed invention. Applicants submit that the Examiner is improperly using hindsight to reject the claims. The above statement does not enable one of ordinary skill in the art to assume that there are offers between distributors and retailers that require validation before content is distributed; nor is there a teaching of how to handle any such offers or validation. On the contrary, one of ordinary skill in the art would assume that the distributors and retailers in Schneck have conventional fixed contracts, and do not need to make and validate offers between themselves, in order to distribute content to consumers.

Further, even if one of ordinary skill in the art would be motivated to assume that candidate retail offers are made between distributors and retailers (and Applicants submit that one is not), Schneck does not teach "validating the candidate retail offer for the distribution of the electronic media content if the candidate retail offer is consistent with the terms of the electronic contract". Schneck only teaches a retailer to encrypt the content to prevent unauthorized use by a consumer and validating the consumer's request to access the encrypted content (not the retailer's request to

distribute the content). See, Schneck, column 9, line 59 to column 10 line 12. Schneck states in his abstract that a "method and device are provided for controlling access to data" and "users are provided access to the data only in accordance with the rules." Both the rules and the data are encrypted and then

a user 104 ... [can] access the data in packaged data 108 (or 150) according to the rules provided with (or separately from, as packaged rules 152) the packaged data and prevents the user or anyone else from accessing the data other than as allowed by the rules.

Schneck, column 15, lines 31-40. The teaching in Schneck to validate access to media content between a retailer and a consumer according to predefined rules does not teach or motivate one of skill in the art to validate and process an offer from a retailer to a consumer by checking an electronic contract between a retailer and a distributor.

Furthermore, Schneck's rules to access the data are static and are fixed at the moment the data is packaged for distribution regardless of the two distribution embodiments. In one of Schneck's embodiments, Schneck states that "the authoring mechanism 112 of the distributor 102 takes data 106 and produces packaged data 108 for distribution. The process ... [produces] the packaged data ... [including the] rules 116." Schneck, column 11, lines 57-60. Schneck also describes an embodiment wherein the "the rules 116 are distributed to users 104 separately from the packaged data 108." Schneck, column 13, lines 50-52. However, as above, the data and rules are fixed at the same time, just distributed to the users as two separate packets. The "authoring mechanism 148 ... [takes] input data 106 and rules 116 and produces, separately, packaged data 150 and packaged rules 152." Schneck, column 13, lines 52-54.

In contrast, an element inherent in the claims and described in the specification is that the "E-Contracts and business rules, if any, related to financial transactions are applied when an offer is exercised by a consumer." Specification, page 13, lines 18-19. The pricing and distribution terms are not fixed to the electronic media content but are dynamic because the terms of the electronic contract can change. The invention allows for the preparation of the electronic media content for distribution to the consumer, the separate preparation of the terms that govern the distribution and the dynamic updating and application to the distributed content the moment the consumer requests the distribution of the content. For example, data prepared by Schneck's invention can only be governed by the rules that exist at the time the data is packaged. If the rules governing the data change, the data must be re-packaged with the new rules. Conversely, the electronic media content of the claims is presented to the consumer and the content is not governed by any terms until the candidate retail offer is validated at the time the consumer requests the content. A specific example is if a retailer and a distributor agree on a sale price for content X of \$20 and then subsequently agree to a price of \$15. Under Schneck's invention, X would be packaged with a rule that allows access to the content for \$20 and would have to be repackaged with a new rule allowing access for \$15. In contrast, X is offered to the consumer and the price of X is not fixed until a consumer requests the content and the candidate retail offer is verified. So the same piece of content can sell for \$20 one day and \$15 the next, without Schneck's requirement of repackaging the content to reflect the new price.

Additionally, the Examiner contends that Schneck discloses that the electronic financial terms comprise contractual terms of agreement between distributors

and retailers. Schneck, column 3, lines 1-9, cited as the relevant portion by the Examiner, states:

Copying and distributing large volumes of digital information over long distances is becoming easier and less costly. Such changes in cost and convenience of necessity impact business decisions concerning producing, distributing, promoting, and marketing. The commercial relationship among information producers (such as authors, performers, and artists), distributors (such as publishers, promoters, and broadcasters), and consumers must change in response to the technology.

Applicants submit that the above does not teach or motivate one of ordinary skill in the art to devise and implement electronic contracts including electronic financial terms and that the electronic financial terms are contractual terms of agreement between parties. Schneck does not teach or suggest electronic versions of contractual agreements and using these contractual terms as part of the method to dynamically distribute electronic media. Nor does Schneck enable one of ordinary skill in the art to make or use the electronic financial terms as claimed in the present invention. Schneck broadly predicts a "change in response to the technology," but does not identify any specific problem or solution, and does not provide the new system claimed here. Schneck does not describe the claimed system for distributing content from producers (distributors) to consumers (users) via resellers (retailers) by validating offers and allocating compensation. Schneck plainly does not provide the claimed invention by offering a nebulous appeal for "change."

Regarding claims 2, 4, 5, 14 and 15, the claims further describe an "electronic contract" having "distribution terms" and "financial terms". The terms relate to terms of a paper contract and govern the relationship between the parties. The Specification describes an embodiment wherein after "a "paper" contract is executed,



the "paper" contract is encoded into two e-Contracts: Distribution and Financial." Specification, page 10, lines 10-11. The electronic contract of claims 2, 4, 5, 14 and 15 is a legally binding contract and controls the relationship between the parties. The terms of the electronic contract controls the payment and the distribution of the electronic media content. Schenck does not teach or suggest any element that governs the commercial relationship between parties; i.e. the content type, the territory the content can be distributed in, the differing price and offer types, etc. See, Specification, page 9, lines 8-15. Again, as above, Schneck does not teach or suggest a paper contract or terms of the paper contract encoded into an electronic form to govern the relationship between the parties. Schenck, at best, discloses that parties, other than the retailer, may be entitled to a portion of the payment. Additionally, claims 2, 4, 5, 14 and 15 all depend from claim 1 and therefore distinguish over the prior art for at least the same reasons discussed with respect to claim 1.

Referring now to independent claims 17, 23 and 26, Applicants submit that the Examiner has misinterpreted Schneck in light of hindsight from the invention. Schneck does not teach or disclose a majority of the steps recited in claim 17. Claim 17 recites "receiving one or more electronic distribution contracts, wherein the one or more electronic distribution contracts govern the distribution of the media content." Similar to the features of claim 1, Schneck does not disclose "electronic distribution contracts" and the argument above regarding "electronic contracts" apply.

Claim 17 further recites "receiving a candidate offer from the retailer." As stated above in regard to a similar feature recited in claim 1, Schneck does not disclose

candidate offers and the argument above, as it pertains to the candidate retail offers of claim 1, applies in traversing this rejection.

Claim 17 also recites

checking the candidate offer against the one or more electronic distribution contracts from the distributor, wherein the checking step further comprises the step of referencing the one or more electronic distribution contracts in a predetermined order.

As stated above, Schneck does not disclose electronic contracts or candidate offers. Further, Schneck does not disclose referencing terms in a predetermined order. The Specification, on page 12, lines 14-19, and page 13, lines 16-17 describes "a predetermined order" as

applying the e-contracts and rules, the general approach is that a more specific contract or rule overrides the less specific one. For example, if the retailer's contract says "no pay-per-play" offers[;] but for a specific title a retailer has a contract allowing "pay-per-play" offer[s], such an offer will be allowed for that title only. In the offer management all the applicable sets of rules (contracts) must be tested in the validation process ... [and t]he order in which the contracts and rules are referenced may be determined by the specificity of the terms within the contracts.

Schneck only discloses checking if "the rules apply any restrictions on the data." Schneck, column 20, lines 38-39. Schneck, Figure 12 and column 20, lines 20-48, does not disclose or suggest a ranking system for the rules, wherein one general rule can be superceded by a specific rule. Schneck only determines,

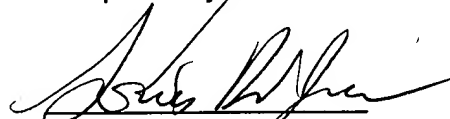
whether or not the rules apply any restrictions on the data (step S1212) (for example, whether or not the rules restrict the output format or amount of the data in some way). If it is determined that the rules restrict the data then the restriction is enforced (step S1214) and the I/O is performed based on the restriction (step S1216), otherwise the I/O is performed without restriction (step S1216).

Schneck, column 20, lines 38-45. Neither the text nor Figure 12 teaches or suggests that Schneck's rules are referenced in a predetermined order. Thus, Schneck does not disclose numerous feature of claim 17.

Regarding claims 19, 24 and 27, as argued above, Schneck does not teach or suggest "receiving at the central location one or more electronic financial contracts from the distributor" and "referencing the one or more electronic financial contracts to determine the portion of compensation to be allocated to the distributor and allocating such portion of the compensation." Schenck does not teach or disclose the relationship between the distributor and retailer and does not disclose electronic financial contracts between the distributor and the retailer. Further, Schneck does not suggest referencing electronic contracts to apportion compensation. Claim 21 depends from claim 19 and therefore distinguish over the prior art for at least the same reasons discussed with respect to claim 19.

Thus, Applicants submit that Schneck does not disclose all of the features of the claimed invention and respectfully request that the above rejection be withdrawn.

Respectfully submitted,



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